Recommendation W-2: Mercury Rule for National Pollutant Discharge Elimination System (NPDES) Permits (COMPLETED)

The Water Resources Division (WRD) sent a letter to the U.S. Environmental Protection Agency (U.S. EPA), Region 5, dated May 4, 2012, (see Attachment 1), asking that their agency consider revisions to the mercury-related requirements under the Great Lakes Initiative, which are over 15 years old. See Recommendation 2 mentioned in the letter. The U.S. EPA's response is in a letter dated September 27, 2012. (See Attachment 2.)

As of March 7, 2012, the WRD modified the amount of staff time spent on mercury compliance activities and how staff evaluate Mercury Pollutant Minimization Plans (PMP). Specific changes are outlined below:

- WRD will no longer collect low-level mercury data (utilizing EPA Method 1631) during routine compliance sampling inspections at facilities that have reduced mercury discharges to less than 10 ng/l.
    - Sampling will be done on a case-by-case basis at facilities with greater than 10 ng/L to document noncompliance in implementing mercury control requirements.

- District staff will be providing a cursory review of all submittals and approve if appropriate (e.g. program appears to be making progress and addressing permit requirements).

In addition, the WRD has modified the Standard Operating Procedure for reviewing PMPs (WB-011, Procedure for the Review of Pollutant Minimization Programs and Annual Reports) with the following modifications noted in Table 1:

Table 1		
Mercury Levels	**Review and approval process for revisions to PMPs that were previously approved**	**Annual Report Review**
Effluent concentration <5 ng/l and in compliance with the level currently achievable (LCA)	Limited cursory review by district staff to make sure it appears appropriate (permittee is not backing off program). No involvement by Permits Section. Approve if adequate.	Cursory review (including the summary of results and actions) by district staff only, then file (rules require submittal of annual report, it doesn't require our review)
Effluent concentration =>5 ng/l and <10 ng/l and in compliance with the LCA	District determines effluent concentration trend over the last couple of years. • If trend is decreasing, then handle as above (<5 ng/l). • If trend is flat or increasing, then as below (=>10 ng/l). Approve if adequate.	District determines effluent concentration trend over the last couple of years. • If trend is decreasing, then cursory review (including the summary of results and actions) • If trend is flat or increasing, then detailed district review. No Permits Section involvement in review unless expertise is needed on a specific issue.
Effluent concentration =>10 ng/l or in noncompliance with the LCA	Full review by district and Permits Section (including treatment technology issues or limits as appropriate). Approve if adequate.	Detailed district review. No Permits Section involvement in review unless expertise is needed on a specific issue.
New PMP requirements imposed in permit	Full review by district and Permits Section (including treatment technology issues or limits as appropriate). Approve if adequate.	Review annual reports as described above based on available data.

The Part 8 Rules (323.1203(o)) state that the department will consider intake toxic substances to be from the same body of water if the department finds that the intake toxic substance would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee and there is a direct hydrological connection between the intake and the discharge points. An intake toxic substance shall be considered to be from the same body of water if the permittee's intake point is located on a Great Lake and the outfall point is in close proximity to the intake point and is located on a tributary of that Great Lake.

Recommendation W-3: Sewerage Systems Rule (COMPLETED)

R 299.2933(4) was rescinded on August 16, 2012.

Recommendation W-5: Nationwide Permitting Approach

HB 5897 was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA. This bill was not acted on in the 2012 legislative cycle. The DEQ will continue to work on these issues with the hope of getting a consensus bill drafted this spring.

W-6: Implementation of General Federal Nationwide Permits: State 401 and Coastal Zone Management Certification of U.S. Army Corps of Engineers (USACE) Nationwide Permits. (COMPLETED)

Under federal law, states must review and either approve, condition or suspend the USACE Nationwide Permit (NWP) categories every five years based on the applicability of the category to the state and the potential impacts on state resources under a Clean Water Act (CWA) 401 certification and Coastal Zone Management (CZM) consistency process. Certification under CWA 401 and CZM is predicated on a proposed category's compliance with many state laws, not only those related to the 404. It is also important to note, in most parts of the state a permit is not required from the USACE due to Michigan's assumption of the 404 program.

The newest list of NWP categories were published in the Federal Register on February 21, 2012. Due to delays in the federal process and conflicts with the statutory requirements for the state review, the DEQ only had eight work days to review and provide certification on all categories. Because of this short timeframe, it was impossible to involve stakeholders in the review. The DEQ certified without additional comments 11 categories and certified with comments 26 categories. The DEQ denied certification on 15 categories. The denied categories that were denied due to (1) lack of applicability in Michigan, (2) category suspended by the USACE Detroit District, or (3)conflicts with Michigan statutes or state permit requirements.

Following Michigan's certification of the NWP categories, the DEQ and the USACE Detroit District worked together to coordinate issuance of the District's Regional Permit Conditions and DEQ's Minor Project and General Permit categories, so that state and federal requirements are the same. This coordination results in a more efficient and transparent permitting process in areas where both state and federal permits are required.

Recommendation W-7: Sanitary Sewer Overflows (COMPLETED)

ORR recommendation W-7 asked that the Part 21 (Wastewater Discharge Permit) rules be revised to direct the DEQ to permit the diversion of separate sanitary flow to a combined sewer Retention Treatment Basin (RTB) for treatment. The intention would be to prevent sanitary sewer overflows (SSOs) and meet state water quality standards. The recommendation also asked that the DEQ permit a system operator under an Administrative Consent Order (ACO) to

divert separate sanitary flow to an RTB to provide the operator time to rehabilitate the sanitary sewer collection system (i.e., interim authorization of the diversion).

Based on the Environmental ARC recommendation, the WRD further investigated this issue. As part of this investigation, it asked the USEPA, Region 5, in writing whether federal rules and requirements allow an SSO that is not already tributary to a collection system that is served by a combined sewer overflow (CSO) RTB to be diverted to this RTB as the final SSO correction program (see Attachment 3). Region 5 provided a written response (see Attachment 4), which indicated that this could only be allowed if the RTB's effluent limitations were to be based on federal secondary treatment regulations and any other requirements needed to comply with state water quality standards. Secondary treatment regulations are found in Title 40 of the Code of Federal Regulations, Part 133. Please note that RTBs are not designed to achieve limits based on federal secondary treatment regulations so the WRD believes that these would be very difficult if not impossible requirements to achieve. The WRD has worked with some communities when developing ACOs for SSOs to allow the situation presented under Recommendation W-7 as an **interim** tool to help reduce raw SSOs and improve water quality.

In summary, the DEQ cannot approve final correction of an SSO by diverting it to a CSO treatment facility, unless the RTB is then subject to effluent limits based on federal secondary treatment regulations. However, the WRD has and will continue to allow for this type of diversion in the interim as part of implementation of a final SSO correction program in an ACO.

In addition, as part of the WRD's SSO corrective action plans and consistent with its SSO Policy and Clarification Statement, the WRD has agreed to use enforcement discretion for systems designed to its remedial design event (typically the 25 yr – 24 hr event – 3.9 inches of rain in a 24-hour period), for discharges that occur due to rain events that are greater than its remedial design event. Consistent with this use of enforcement discretion, the WRD has and will continue to allow diversion of SSOs due to extreme rain events that exceed the state remedial design event to a CSO treatment facility, to minimize environmental and public health impacts.

The WRD sent a second letter (see attachment 5) to the U.S Environmental Protection Agency (EPA), dated February 5, 2013, asking some additional questions regarding the federal combined sewage overflow (CSO) and sanitary sewer overflow (SSO) requirements specific to Oakland County. EPA's response is in a letter dated March 14, 2013 (see attachment 6). The Water Resources Division will be working with the Oakland County Water Resources Commissioner on an alternative approach.

Recommendation W-8: Agricultural Activities under Parts 301 and 303 of NREPA

HB 5897 was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA. This bill was not acted on in the 2012 legislative cycle. The DEQ will continue to work on these issues with the hope of getting a consensus bill drafted this spring.

Recommendation W-11: NPDES Permitting of Stormwater Runoff at Airports (COMPLETED)

This recommendation has been completed. The WRD's response to Recommendation W-11 is that it needs to continue to issue its industrial storm water general permit (GP) for most airports as the applicable control document. As a requirement of our industrial storm water GP, the

Storm Water Pollution Prevention Plan (SWPPP) can be tailored to a particular airport in order to eliminate, if possible, or reduce the discharge of Airport Deicing Fluids (ADF) to acceptable levels based on compliance with the nonstructural and structural controls required in the SWPPP. Though it is stated on page A-86 of the "Recommendations of the Office of Regulatory Reinvention Regarding Environmental Regulations – December 23, 2011" that the GP prohibits the discharge of any ADF in storm water, this is actually not the case.

In accordance with the federal Clean Water Act (CWA) and the NREPA, all NPDES permits require technology-based requirements and if water quality standards are not being met (or would not be met) with their implementation, then more stringent water quality-based requirements must be established. These are the federal requirements under the CWA, so this approach is not more restrictive, but instead consistent, with federal requirements. Therefore, should the industrial storm water GP not adequately protect the receiving waters at a particular airport, the DEQ must develop an individual permit with the necessary effluent requirements/conditions to insure compliance with water quality standards. Actual cases where the WRD has decided to use an individual permit are where actual water quality issues have been documented, such as observed nuisance biofilms or fish kills that have brought to light depressed dissolved oxygen levels. Please note that use of individual permits is also discussed on the federal level. The USEPA's multisector general permit states, "USEPA may require you to apply for and/or obtain authorization to discharge under either an individual NPDES permit or an alternative general permit…"

In summary, use of the Michigan industrial storm water GP requires control plans to be developed. Consistent with the federal CWA, the WRD can (and must) alternatively develop an individual permit that includes protective requirements to meet water quality standards if its GP does not protect water quality standards. The WRD has used this approach for Detroit Metropolitan Airport and is currently using this approach for the Gerald R. Ford International Airport.

Recommendation W-12: Wetland Mitigation Banks

HB 5897 was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA. This bill was not acted on in the 2012 legislative cycle. The DEQ will continue to work on these issues with the hope of getting a consensus bill drafted this spring.

Recommendation W-13: Annual Wastewater Report (COMPLETED)

This recommendation has been completed. Public Act 43 of 2012 has repealed the annual wastewater reporting requirement contained in the NREPA and rescinded the corresponding rules. The DEQ's annual wastewater reporting Web site has been modified to reflect this change.

Recommendation W-15: Coordinating Storm Water Operators for Construction Sites with Local Enforcement of Soil Erosion and Sedimentation Control (SESC) (COMPLETED)

This recommendation has been completed. The WRD did not have to amend R 323.2190 to provide construction site owners the option of utilizing the services of local Part 91 (Soil Erosion and Sedimentation Control of the NREPA) inspectors to fulfill the inspection and compliance reporting requirements.

The WRD did update their "Training FAQ" found on the DEQ Soil Erosion Web page (go to www.michigan.gov/deqland, select "Soil Erosion and Sedimentation Control," and then "Training FAQ") to include the following:

> *Can the Construction Storm Water Operator and the SESC inspector duties be performed by the same person on a site?*
>
> Yes, if the person performing the inspections is working for a Part 91 Agency, one inspection can count for both Construction Storm Water Operator Requirements and SESC inspector requirements. This situation commonly occurs with Authorized Public Agencies. Private construction sites can utilize the Part 91 Agency Inspector as the Construction Storm Water Operator, if the Part 91 Agency agrees to perform this service. In those cases the SESC inspection would count as a Construction Storm Water inspection and vice versa. *Please note that inspection frequency for Storm Water Operators can be more frequent than that required of Part 91, SESC inspectors. Storm Water Operator inspections must be conducted at least once weekly and within 24 hours of any precipitation event that result in a discharge of storm water from the site.

W-18: NPDES Water Treatment Additives (COMPLETED)

Process to Receive Approval to Discharge Select Water Treatment Additives (WTA)

Select WTAs are those commonly used chemical products that are added as conditioners to improve the water quality for use in a system or process, condition and treat the water to make it suitable for discharge, are considered to not adversely affect aquatic life, are a single chemical (i.e., not a mixture of chemicals), and can be regulated through a facility's NPDES permit with a chemical specific water quality-based effluent limit (WQBEL), using a parameter that mitigates the WTA toxicity (i.e., pH limits that mitigate a pH adjusting WTA).

The following commonly used disinfectants and dechlorinating agents, flocculants, pH adjusters, water softeners, and oxygen scavengers are included on the List of Select Water Treatment Additives (click on list).

The process to receive approval to use and subsequently discharge Select WTAs to a surface water of the state from a NPDES permitted outfall includes the following:

1. The receipt of a complete form Notice to Discharge Select Water Treatment Additives For Permitted Facilities Under the National Pollutant Discharge Elimination System (NPDES). The form must be sent via e-mail to wrdpermits@michigan.gov.

2. Upon receipt of your email request, you will receive an automatic response. The automatic response is required prior to the discharge of any select WTA to a surface water of the state from a NPDES permitted outfall.

3. Only those Select WTAs included on the list are authorized under this process. The process to receive approval to discharge any WTA not included on the List of Select Water Treatment Additives is outlined, above.

4. The corresponding WQBEL for the Select WTA must already be included in the NPDES permit for the outfall from which the WTA will be discharged.

5. Required sampling to fulfill NPDES permit requirements must be conducted on effluent discharged from the outfall during a representative time period of Select WTA usage and discharge.

6. The facility must already possess a NPDES permit, and the outfall from which the Select WTA will be discharged must already be permitted under the NPDES permit.

LIST OF SELECT WATER TREATMENT ADDITIVES

NOTE: Approval to discharge additives on this list must be obtained by the Water Resources Division prior to use and discharge of the additive. Additives that contain the following chemicals as a single constituent in the product (plus water) are considered to be Select Water Treatment Additives.

Table 1. Select Water Treatment Additives - disinfectants and dechlorinating agents.

Constituent	Product Type	NPDES Limited Parameter
Calcium hypochlorite	Disinfectant	TRC and pH
Sodium hypochlorite	Disinfectant	TRC and pH
Chlorine gas	Disinfectant	TRC and pH
Sodium thiosulfate	Dechlorinating Agent	TRC and pH
Sodium sulfite	Dechlorinating Agent	TRC and pH
Sodium bisulfite	Dechlorinating Agent	TRC and pH
Sodium metabisulfite	Dechlorinating Agent	TRC and pH

Table 2. Select Water Treatment Additives - flocculants.

Constituent	Product Type	NPDES Limited Parameter
Ferric chloride	Flocculant	pH
Aluminum sulfate (alum)	Flocculant	pH

Table 3. Select Water Treatment Additives - pH adjusters and water softeners.

Constituent	Product Type	NPDES Limited Parameter
Hydrochloric acid (muriatic acid, hydrogen chloride)	pH Adjuster and Water Softener	pH
Phosphoric acid	pH Adjuster and Water Softener	Phosphorus and pH
Sodium hydroxide	pH Adjuster and Water Softener	pH

Sulfuric acid	pH Adjuster	pH

Table 4. Select Water Treatment Additives - oxygen scavengers.

Constituent	Product Type	NPDES Limited Parameter
Sodium bisulfite	Oxygen Scavenger	pH and DO

Inspects cannot be created from editing field codes. Completion of this form with all applicable information is mandatory and is required by Part 31 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The discharge of a Water Treatment Additive without review and approval may result in commencement of an enforcement action. Failure to comply with these provisions may result in fines of up to $25,000 per day and the possibility of imprisonment, in accordance with Act 451, PA 1994, Part 31.

FACILITY INFORMATION			
FACILITY NAME		FACILITY CONTACT (FIRST AND LAST NAME)	
ADDRESS		FACILITY CONTACT EMAIL	PHONE NUMBER
CITY	ZIP CODE	COUNTY	NPDES PERMIT NUMBER/CERTIFICATE OF COVERAGE (COC) NUMBER

WATER TREATMENT ADDITIVE DISCHARGE INFORMATION	
WATER TREATMENT ADDITIVE (WTA)/CHEMICAL CONSTITUENT(s) OF WTA	
OUTFALL(S) WTA WILL BE DISCHARGED FROM	DURATION OF DISCHARGE (DAYS PER WEEK / HOURS PER DAY)
MAXIMUM DOSAGE RATE	WTA CONCENTRATION IN THE FINAL DISCHARGE
TYPE OF REMOVAL TREATMENT (IF ANY) THE WTA RECEIVES PRIOR TO DISCHARGE	

1.) DOES THE OUTFALL FROM WHICH THE WTA(s) WILL BE DISCHARED HAVE THE APPLICABLE NPDES LIMIT PER THE LIST OF SELECT WTA'S?

☐ **YES** – CONTINUE TO ITEM 2
☐ NO – WTA IS NOT AUTHORIZED TO BE DISCHARGED UNDER THIS PROCESS.

2.) APPLICABLE NPDES LIMIT PER THE LIST OF SELECT WTA'S.
Note: required sampling to fulfill NPDES permit requirements must be conducted on effluent discharged from the outfall during a representative time period of Select WTA usage and discharge.

CERTIFICATION

State of Michigan regulations require this form be signed as follows:

Corporation: By the principal executive officer or vice president or higher, or his/her designated representative if the representative is responsible for the overall operation of the facility from which the discharge described originates.
Partnership: By a general partner
Sole Proprietorship: By the proprietor
Municipal, State, or Other Public Facility: By a principal executive officer, the mayor, village president, city or village manager, or other duly authorized employee
*****Note: If the signatory is not listed above, but is authorized to sign the Application please provide documentation of that authorization.***

I certify, under penalty of law, that this document and all attachments were prepared by me, or

under my direction or supervision in accordance with a system to assure qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person(s) who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I understand that my signature constitutes a legal agreement to comply with the requirements of the appropriate NPDES Permit. I certify under penalty of law that I possess full authority on behalf of the legal owner/permittee to sign and submit this Notice to Discharge.

Printed Name	Title
Signature	Date

IF YOU HAVE ANY QUESTIONS ABOUT THE PREPARATION OF THIS FORM, PLEASE CALL 517-373-4633.

RETURN THIS COMPLETED FORM, AND ANY ATTACHMENTS TO WRDPERMITS@MICHIGAN.GOV OR MAIL:

MICHIGAN DEPARTMENT ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION – PERMIT SECTION
525 WEST ALLEGAN STREET, 2nd FLOOR NORTH
P.O. BOX 30458
LANSING MI 48909

Recommendation W-19: Mercury Standard for Groundwater

The WRD sent a letter to the USEPA, Region 5, dated May 4, 2012 (see Attachment 1), asking that the agency consider revisions to the mercury-related requirements under the Great Lakes Initiative, which are over 15 years old. See Recommendation 1 mentioned in the letter. The USEPA's response is in a letter dated September 27, 2012. See Attachment 2.

ATTACHMENT 1

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

DAN WYANT
DIRECTOR

May 4, 2012

Ms. Tinka Hyde, Director
Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (W-15J)
Chicago, Illinois 60604-3507

Dear Ms. Hyde:

On February 23, 2011, Michigan Governor Rick Snyder issued Executive Order 2011-5 creating an Office of Regulatory Reinvention (ORR) within the Michigan Department of Licensing and Regulatory Affairs. The ORR is responsible for creating a regulatory environment that is simple, fair, efficient, and conducive to business growth and job creation in the state of Michigan. The Executive Order required the ORR to submit a written report to the Governor with recommendations concerning existing rules and regulations, and proposed rulemaking and regulatory activities. This report was submitted on December 23, 2011 (http://www.michigan.gov/documents/lara/ORR_-_Environmental_Recommendations_377252_7.pdf). We are seeking your assistance in implementing two recommendations related to mercury regulations established under Title 40 of the Code of Federal Regulations, Part 132, Water Quality Guidance for the Great Lakes System ("Great Lakes Initiative" [GLI]).

Prior to submitting its recommendations to the Governor, the ORR considered recommendations made by the Environmental Advisory Rules Committee (ARC) that was also established as part of the Executive Order. Membership in the Environmental ARC was determined by the ORR and included a broad spectrum of stakeholders, including manufacturing and utility representatives, environmental consultants and attorneys, a representative of the environmental community, and the Michigan Department of Environmental Quality's (MDEQ) Director of Policy and Legislative Affairs.

The final report to the Governor includes recommendations to Michigan's environmental statutes, rules, non-rule regulatory actions, regulatory processes, and engagement with stakeholders. The following are two recommendations in the report:

Recommendation 1:

> *"The groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l was adopted from the Great Lakes Initiative. The criterion should be recalculated using current toxicological methods. The criterion is lower than ambient concentrations in most inland waters. DEQ should work with the USEPA to revise the GLI with respect to the groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l, by applying current science."*

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Recommendation 2:

> *"Allow an NPDES permittee with a water quality-based effluent limit (WQBEL) for mercury in the permit to account for inlet loading concentration when their contribution to the effluent is negligible. Language should be added to R 323.1211(7)(a) that states: If the mean effluent concentration is less than 10% greater than the mean inlet concentration (using 24 consecutive months of monitoring data) and does not exceed the mean inlet concentration by more than 0.5 PPT, then the permittee should be exempt from the PMP requirements and subject to annual monitoring."*

The MDEQ agreed to pursue regulatory changes related to both recommendations. Because these regulations are based on the GLI, which are more than 15 years old, we are requesting the United States Environmental Protection Agency (USEPA) consider revisions to the GLI.

In regards to the first recommendation, new scientific information related to establishing mercury water quality standards is available and could alter the current wildlife value for mercury. However, we understand that modification of the wildlife value for mercury would have little impact on the groundwater/surface water interface criterion or any subsequent WQBEL based on this criterion, since the human health value is similar to the wildlife value. We therefore recommend that the human health value for mercury also be reexamined.

The second recommendation stems from the fact that air emissions are the greatest source of mercury to Michigan's aquatic resources. We therefore request that the USEPA reevaluate all mercury-related requirements under the GLI and make appropriate changes based on new science and consideration for control of sources that have the greatest impact on aquatic sources. This includes evaluating the appropriateness of the suggested 10 percent and 0.5 PPT endpoints outlined in Recommendation 2.

Should you require further information, please contact Ms. Sylvia Heaton, Surface Water Assessment Section, Water Resources Division, at 517-373-1320, or you may contact me.

Sincerely,

William Creal, Chief
Water Resources Division
517-335-4176

cc: Ms. Linda Holst, Region 5, USEPA
Mr. David Pfeifer, Region 5, USEPA
Ms. Jamie Clover Adams, Director of Policy and Legislative Affairs, MDEQ
Ms. Diana Klemans, MDEQ
Mr. Gary Kohlhepp, MDEQ
Ms. Sylvia Heaton, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 27 2012

REPLY TO THE ATTENTION OF: WQ-16J

William Creal, Chief
Water Resource Division
Michigan Department of Environmental Quality
P.O. Box 30273
Lansing, Michigan 48909-7741

Dear Mr. Creal:

Thank you for your May 4 letter in which you seek U.S. Environmental Protection Agency assistance in implementing two mercury-related recommendations which were included in the Michigan Office of Regulatory Reinvention's (ORR) report to the Governor. EPA Region 5 consulted with several offices in EPA headquarters to evaluate the recommendations, and our collective responses are included below.

Regarding the first ORR recommendation, EPA requests that you forward certain information cited in your letter. ORR's first recommendation is for the Michigan Department of Environmental Quality (MDEQ) to work with EPA to update the mercury criteria for wildlife and human health with new scientific information. EPA anticipates that any revisions to the applicable water quality criteria for mercury in the Great Lakes Water Quality Guidance (Guidance) published at 40 CFR Part 132 would involve the commitment of substantial governmental resources (including by EPA, Great Lakes States, as well as Tribes), and prior notice and opportunity for public comment on any proposed revisions. Revision to the wildlife criteria would also require EPA consultation with the U.S. Fish and Wildlife Service related to effects on endangered and threatened species. Your letter mentions that new information is available that could alter the wildlife criteria. At this time, EPA is unaware of any new scientific information that would alter significantly the wildlife or human health criteria. EPA would appreciate the opportunity to review any such information prior to considering whether to recommend the commitment of resources to revision of the Guidance.

As you are aware, the Guidance provides for a variety of options to consider should a Great Lakes state seek to modify existing criteria based on the Guidance. First, Procedure 1 in Appendix F allows for site-specific criteria changes under certain circumstances, for example, where calculations using a different bioaccumulation factor would be justified. Second, if substantial new information renders one or more criteria in the Guidance scientifically indefensible, the provisions in 40 CFR 132.4(h) to adopt new criteria are available even if proposed criteria would be higher values than the criteria specified in the regulations at 40 CFR Part 132. In acting on any such proposal, EPA would want to evaluate all current and relevant information in reviewing any documentation of a purported demonstration that the criteria (or methodologies) in the Guidance are scientifically indefensible.

Regarding the ORR's second recommendation, EPA requests further clarification. ORR's second recommendation requests that EPA reevaluate all mercury requirements in 40 CFR Part 132 and consider controlling the sources that have the greatest impact on aquatic resources. ORR recommended adding language in Michigan rules at R 323.1211(7)(a) to exempt dischargers with permits containing water quality-based effluent limits (WQBELs) for mercury from pollutant minimization program (PMP) requirements if the mean effluent concentration of the discharge does not exceed the mean influent concentration by more than 0.5 parts per trillion or 10 percent.

The explicit requirement that a permittee develop and implement a PMP for mercury - in both the Guidance (see 40 CFR 132, Appendix F, Procedure 8) and in Michigan's rules on WQBELs for toxics (see R 323.1213) - applies only when a WQBEL is below the quantification level using the most sensitive, applicable analytical method in 40 CFR Part 136. For mercury, the most sensitive, applicable analytical method is EPA Method 1631 which has a quantification level of 0.5 ng/L – a level below the wildlife and human health criteria for mercury in the Guidance.

Therefore, EPA does not understand what ORR's recommendation attempts to address because neither Procedure 8 of the Guidance nor Michigan's WQBEL rules would trigger a requirement to include a PMP for mercury in a permit. Any WQBELs for mercury should be greater in magnitude than the quantification level for EPA Method 1631. If ORR's second recommendation is intended to refer to PMPs being required when mercury variances are granted, then the citation to R 323.1211(7)(a) is confusing because that section pertains to consideration of intake credits when establishing permit limits, and not variances to water quality standards. Clarification on the PMP recommendation is needed in order for EPA to respond adequately.

If you would like to discuss these issues further, please contact David Pfeifer at (312) 353-9024, or you may contact me.

Sincerely,

Tinka G. Hyde
Director, Water Division

cc: Diana Klemans, MDEQ
Sylvia Heaton, MDEQ

ATTACHMENT 3

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

DAN WYANT
DIRECTOR

April 12, 2012

Ms. Tinka Hyde, Director
Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (W-15J)
Chicago, Illinois 60604-3507

Dear Ms. Hyde:

The purpose of this letter is to request the interpretation by the United States Environmental Protection Agency (USEPA), Region 5, of federal rules and requirements pertaining to a specific question regarding sanitary sewer overflows (SSO) and combined sewer overflows (CSO). Specifically, the Michigan Department of Environmental Quality (MDEQ) has worked to operate under the interpretation that federal rules do not allow an SSO that is not already tributary to a permitted combined sewer outfall to be routed to a CSO treatment facility as the final SSO correction program. However, municipalities and others continue to question this interpretation. Therefore, we would like the input of Region 5 at this time.

Our position centers on the interpretation that for a sanitary sewer system, the publicly owned treatment works (POTW) (as defined in Section 403.3 of the federal Clean Water Act [CWA]) includes the collection system and, as such, the CWA requires limits based on secondary treatment standards (or any more stringent requirements based on meeting water quality standards). This definition states, "POTW means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a 'State' or 'municipality'. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment."

A separate sanitary collection system is by design a closed system, so it is only intended to convey wastewater to a POTW. Therefore, the DEQ deems a separate sanitary collection system to be part of the POTW, and that the discharge from a POTW must meet secondary treatment requirements (or any more stringent requirements to meet water quality standards) or be eliminated. As an aside, the DEQ sets forth what constitutes "elimination" in our SSO Policy Statement and SSO Clarification Statement, and enforceable documents have been entered that require SSO correction programs for many communities across the state.

On the other hand, a combined sewer collection system is not part of the POTW as defined under the CWA and its associated regulations. It is an open system by design that allows discharges from the system. The 1994 USEPA CSO Policy reads, in part, "A CSO is the discharge from a combined sewer system at a point prior to the POTW Treatment Plant. CSOs are point sources subject to the NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment requirements applicable to POTWs." The Wet Weather Water Quality Act of 2000 amended the CWA to provide that each permit, order, or decree issued after December 15, 2000, for a discharge from a combined sewer shall conform to the CSO Control Policy. The MDEQ addresses CSO control programs consistently with the CWA, and as set forth in the

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Michigan CSO Control Program Manual (1994) and subsequent state documents. CSOs in Michigan must be controlled to meet as technology-based requirements the nine minimum controls, and as water quality-based requirements adequate treatment to meet all water quality standards at times of discharge.

In summary, our interpretation to date has been that an SSO is a discharge from a POTW and, as such, must either be controlled to meet secondary treatment requirements or eliminated (consistent with the MDEQ's SSO Policy Statement and Clarification Statement). We believe that simply correcting an SSO by connecting it to a combined sewer system treatment system does not meet federal requirements under the CWA. This incremental SSO discharge would not meet secondary treatment requirements if discharged from a CSO Retention Treatment Basin nor be eliminated, in Michigan's case, consistent with the MDEQ's SSO Policy Statement and Clarification Statement. The law does not appear to specifically state that this type of correction is not allowed, but it also does not appear to overtly authorize it either.

We appreciate and request your interpretation. If you need any additional information or wish to discuss this, please contact me. Alternatively, you may also contact either Mr. Pete Ostlund at 517-373-1962 or Mr. Phil Argiroff at 517-241-1341.

Sincerely,

William Creal

William Creal, Chief
Water Resources Division
517-335-4176

cc: Mr. Pete Ostlund, MDEQ
Mr. Phil Argiroff, MDEQ
Mr. Dave Fiedler, MDEQ

ATTACHMENT 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 31 2012

REPLY TO THE ATTENTION OF:
WN-16J

WATER RESOURCES DIVISION
JUN 07 2012

William Creal, Chief
Water Resources Division
Michigan Department of
Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909

Re: Question regarding relocation of Sanitary Sewer Overflows to a Combined Sewer Overflow Treatment Facility

Dear Mr. Creal:

This letter is in response to questions raised in your April 12, 2012 letter. In your letter, you request clarification on what regulatory standards apply to a discharge from a wet weather treatment facility that receives flows from two independent sources, a sanitary sewer collection system and a combined sewer system, when the wet weather treatment facility is located prior to the headworks of a municipality's main secondary treatment plant.

Discharges from such a wet weather treatment facility are considered to be combined sewer overflows (CSOs), when the wet weather treatment facility only receives flows from a combined sewer collection system. CSOs are subject to effluent limitations based on BAT/BCT or any more stringent limitations necessary to attain water quality standards. However, discharges from a wet weather treatment facility that directly accepts flows from multiple collection systems, including flows from a sanitary sewer collection system as well as from a combined sewer system, and mixes the flows from the different collection systems, would be subject to effluent limitations based on the secondary treatment regulations or any more stringent limitations necessary to attain water quality standards. Thus, in the scenario outlined in your letter, involving flows from a sanitary sewer system being routed directly to a CSO retention treatment facility, discharges from that facility would be subject to effluent limitations based on the secondary treatment regulations or more stringent limitations necessary to attain water quality standards.

We hope that this letter will assist the Michigan Department of Environmental Quality in resolving questions regarding this issue. Please contact Patrick Kuefler, at (312) 353-6268, if you have any questions.

Sincerely,

for Tinka G. Hyde
Director, Water Division

cc: Mr. Pete Ostlund, MDEQ
Mr. Phil Argiroff, MDEQ
Mr. Dave Feidler, MDEQ

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

DAN WYANT
DIRECTOR

February 5, 2013

Ms. Tinka G. Hyde, Director
Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dear Ms. Hyde:

I am writing to, once again, seek your clarification on the federal rules and requirements regarding sanitary sewer overflows (SSO) and combined sewer overflows (CSO). However, this time I am asking, on a site specific basis, if enforcement discretion and the United States Environmental Protection Agency's (USEPA) Integrated Municipal Storm Water and Wastewater Planning Framework provide sufficient flexibility to allow a nontraditional permanent solution to SSO capture and treatment under most wet weather events as detailed below.

Last April, we sent a letter to you asking for interpretation of federal rules and requirements pertaining to a specific question regarding SSOs and CSOs. In that letter we stated that the Department of Environmental Quality has operated under the interpretation that federal rules do not allow an SSO that is not already tributary to a permitted combined sewer outfall to be routed to a CSO treatment facility as the final SSO correction program. In May, we received a response from you that supports how we operate by stating that if such an SSO were to be routed to a CSO treatment facility, then any discharge from the facility would then have to meet federal secondary treatment requirements. CSO treatment facilities in Michigan meet water quality standards at all times but are not designed to meet federal secondary treatment requirements. We appreciate your response to our previous question, and have enclosed both letters for your convenience.

Recently, we met with the Oakland County Water Resources Commissioner (OCWRC) and his staff to discuss this issue, and we now have two additional questions. The situation that first prompted us to ask for your interpretation of federal rules was specifically from Oakland County. Before we ask our additional questions, the situation is described in greater detail below.

By way of background, Oakland County's Evergreen-Farmington Sewer Disposal District (District) is tributary to the city of Detroit's combined sewer system and the Detroit Wastewater Treatment Plant (WWTP). The outflow from the District is transported preferentially in Detroit sewers to the WWTP for preferential secondary

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treatment during wet weather events, but still may become part of a downstream CSO to the Detroit River under very limited circumstances. Historically, the Evergreen Farmington District had combined areas that were tributary to 38 untreated CSOs, and more expansive separate sanitary areas that were not tributary to these combined outfalls but had and continue to have SSOs. The separate areas had an original administrative order from the late 1980s that called for correction of SSOs. This order needed to be amended in the early 2000s to address continuing SSOs. The 38 CSOs were all eliminated under several National Pollutant Discharge Elimination System permits in the mid-1990s by constructing three CSO Retention Treatment Basins (RTBs). These RTBs were designed to ensure that water quality standards would be met at times of discharge, but not designed to meet secondary treatment requirements. In order to fulfill the amended SSO order, the OCWRC has undertaken several projects, though additional work remains. The amended order was written to preclude the possibility of sending excess sanitary flow from the sanitary sewer areas to these CSO RTBs, except while the order was being implemented or during emergency conditions (i.e. an extreme storm event that is greater than the remedial design event from our SSO Policy). As you can see, the OCWRC has been proactive and deserves a great deal of credit for eliminating water quality issues due to CSOs, and for moving along with its order to correct its SSOs.

The OCWRC has stated that as part of their Long Term Corrective Action Plan, they would control one of their largest SSO discharges with a tunnel project that has an estimated cost of $36 million. Further, they would be able to avoid expenditure of an additional $12 million and eliminate another SSO by routing wet sanitary flow (under a revised SSO correction order) to one of the existing CSO RTBs as a permanent solution. The OCWRC states that this solution is cost-effective and allows the OCWRC to use their resources to tackle control of other SSOs in the District with an integrated approach. The OCWRC expects that:

- Under current conditions, excess sanitary flow would be diverted to the RTB about once per year on average (this would be permissible under the current Order);
- Under future conditions, the frequency of discharge of excess sanitary flow into the RTB would likely be reduced by making additional operational changes and/or interceptor system changes though this frequency has yet to be determined;
- The excess sanitary flow would be a small fraction of the influent and effluent volumes of the RTB;
- The peak influent flow rate of 14 cfs excess sanitary flow to the RTB, would be a small fraction of the total peak design flow rate of 700 cfs for the RTB;
- Water quality standards in the receiving waters would continue to be met at the time of discharge from the RTB; and
- All of the above statements would be verified through a demonstration project.

Given your first response this past May, we are now asking if; 1) the USEPA's Integrated Municipal Storm Water and Wastewater Planning Framework (dated June 2012), and/or 2) the potential to use enforcement discretion allows flexibility in this circumstance to permit this project as the permanent solution.

We appreciate your input on the two new questions that are being posed on this issue. If you have any questions or need further clarification, please feel free to contact me; Mr. Pete Ostlund, Chief, Field Operations Section-Lakes Erie and Huron, Water Resources Division (WRD), Michigan Department of Environmental Quality (MDEQ), at 517-373-1982; or Mr. Phil Argiroff, Chief, Permits Section, MDEQ, at 517-241-1341.

Sincerely,

William Creal, Chief
Water Resources Division
517-335-4176

Enclosures
cc: Mr. Pete Ostlund, MDEQ
Mr. Phil Argiroff, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 14 2013

WN-16J
REPLY TO THE ATTENTION OF:

William Creal, Chief
Water Resources Division
Michigan Department of
Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909

Re: Questions Regarding Potential Remedies to Permanently Address Sanitary Sewer Overflows

Dear Mr. Creal:

This letter is in response to your February 5, 2013 letter in which you asked whether U.S. Environmental Protection Agency's Integrated Municipal Stormwater and Wastewater Planning Framework (dated June 2012), and/or the use enforcement discretion would allow separate sanitary wastewater flow to be treated and discharged through a combined sewer overflow (CSO) treatment unit as a permanent solution to a sanitary sewer overflow (SSO) problem.

The answer to your question is that routing sewage from a sanitary sewer system to a CSO treatment facility cannot be permitted as a permanent solution to an SSO problem unless discharges from that facility are subject to effluent limitations based on secondary treatment. The project that you described in your February 5, 2013 letter could only be considered an interim solution, not a permanent solution. Under the Integrated Municipal Stormwater and Wastewater Planning Framework, an integrated project plan must lead to meeting all applicable legal requirements, but can allow for flexible scheduling and other considerations. The proper exercise of enforcement discretion would provide similar flexibility but likewise must result in full compliance with the regulatory requirements.

As we explained in our May 31, 2012 letter to you, discharges prior to the headworks of a Publicly Owned Treatment Works (POTW) treatment facility from a wet weather treatment facility that receives flows from a collection system with only combined sewers are considered to be combined sewer overflows (CSOs). CSOs are subject to effluent limitations based on BAT/BCT or any more stringent limitations necessary to attain water quality standards. However, discharges from a wet weather treatment facility that directly accepts flows from multiple collection systems, which include flows from a sanitary sewer collection system as well as from a combined sewer systems would be subject to effluent limitations based on the secondary treatment regulations at 40 CFR Part 133 or any more stringent limitations necessary to attain water quality standards.

We hope that this letter will assist the Michigan Department of Environmental Quality in resolving questions regarding this issue. Please contact Patrick Kuefler, at (312) 353-6268, if you have any questions.

Sincerely,

for Tinka G. Hyde
Director, Water Division

cc: Mr. Pete Ostlund, MDEQ
Mr. Phil Argiroff, MDEQ
Mr. Dave Feidler, MDEQ